

WC 06-39

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Remittance ID:868237 Authorization**Number:215453****Successful Authorization -- Date Paid: 2/3/06****FILE COPY ONLY!!**

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING (1) LOCKBOX #358115	FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE FORM 159 PAGE NO 1 OF 1	APPROVED BY OMB 3060-059 SPECIAL USE FCC USE ONLY
SECTION A - Payer Information		
(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card) Harris, Wiltshire & Grannis LLP		(3) TOTAL AMOUNT PAID (dollars and cents) \$895.00
(4) STREET ADDRESS LINE NO. 1 1200 Eighteenth Street, NW		
(5) STREET ADDRESS LINE NO. 2		
(6) CITY Washington	(7) STATE DC	(8) ZIP CODE 20036
(9) DAYTIME TELEPHONE NUMBER (INCLUDING AREA CODE) 202-7301330		(10) COUNTRY CODE (IF NOT IN U.S.A.) US
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(11) PAYER (FRN) 0004362307		(12) FCC USE ONLY
IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)		
(13) APPLICANT NAME Level 3 Communications, LLC		
(14) STREET ADDRESS LINE NO. 1 1025 Eldorado Blvd.		
(15) STREET ADDRESS LINE NO. 2		
(16) CITY Broomfield	(17) STATE CO	(18) ZIP CODE 80021
(19) DAYTIME TELEPHONE NUMBER (INCLUDING AREA CODE) 720-8882516		(20) COUNTRY CODE (IF NOT IN U.S.A.) US
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(21) APPLICANT (FRN) 0008085136		(22) FCC USE ONLY
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET		
(23A) FCC Call Sign/Other ID 214 App	(24A) Payment Type Code(PTC) CUT	(25A) Quantity 1
(26A) Fee Due for (PTC) \$895.00	(27A) Total Fee \$895.00	FCC Use Only
(28A) FCC CODE 1	(29A) FCC CODE 2	
(23B) FCC Call Sign/Other ID	(24B) Payment Type Code(PTC)	(25B) Quantity
(26B) Fee Due for (PTC)	(27B) Total Fee	FCC Use Only
(28B) FCC CODE 1	(29B) FCC CODE 2	

STAMP AND RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

PROGRESS ENERGY, INC.
ODYSSEY TELECORP INC.,
Transferors,

LEVEL 3 COMMUNICATIONS, LLC,
Transferee,

PROGRESS TELECOM, LLC,
Licensee,

Application for Consent to Transfer Control of
Domestic Common Carrier Transmission Lines
Pursuant to Section 214 of the Communications
Act of 1934, as Amended

WC Docket No. 06-_____

RECEIVED

FEB - 3 2006

Federal Communications Commission
Office of Secretary

**APPLICATION—
STREAMLINED PROCESSING REQUIRED**

Pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), and Section 63.04 of the Commission's rules, Progress Energy, Inc. ("Progress Energy," FRN No. 0006019780), Odyssey Telecorp, Inc. ("Odyssey," FRN No. 0014621395) (collectively with Progress Energy, "Transferors") and Level 3 Communications, LLC ("Level 3," FRN No. 0008085136), request that the Commission consent to the transfer of control to Level 3 of the domestic common-carrier transmission lines of Progress Telecom, LLC ("Progress Telecom," FRN No. 0007453731) (collectively, with Progress Energy, Odyssey, and Level 3, "Applicants").¹ Level 3 has entered into an agreement with Progress Energy and Odyssey to

¹ See 47 U.S.C. § 214; 47 C.F.R. § 63.04.

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**APPLICATION—
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Pursuant to Section 214 of the Communications Act of 1934, as amended (the “Act”), and Section 63.04 of the Commission’s rules, Progress Energy, Inc. (“Progress Energy,” FRN No. 0006019780), Odyssey Telecorp, Inc. (“Odyssey,” FRN No. 0014621395) (collectively with Progress Energy, “Transferors”) and Level 3 Communications, LLC (“Level 3,” FRN No. 0008085136), request that the Commission consent to the transfer of control to Level 3 of the domestic common-carrier transmission lines of Progress Telecom, LLC (“Progress Telecom,” FRN No. 0007453731) (collectively, with Progress Energy, Odyssey, and Level 3, “Applicants”).¹ Level 3 has entered into an agreement with Progress Energy and Odyssey to

¹ See 47 U.S.C. § 214; 47 C.F.R. § 63.04.

acquire all of the membership interests in Progress Telecom, with certain subsidiaries and assets excluded (“Proposed Transaction”). This consolidated application qualifies for presumptive streamlined processing under Section 63.03(b)(2)(i) of the Commission’s rules, and the Applicants therefore request such streamlined processing and expeditious treatment that would allow the parties to consummate the Proposed Transaction in March 2006.² The Proposed Transaction will serve the public interest, convenience, and necessity, and will not significantly affect any participant’s share of the local exchange, exchange access, or interexchange market segments.

I. BACKGROUND

A. Parties to the Proposed Transaction

Progress Energy, Inc.: Progress Energy is a North Carolina corporation headquartered in Raleigh, North Carolina, and engages in diversified energy businesses, including operation of electric utilities in Florida, North Carolina, and South Carolina, as well as competitive generation, energy marketing, natural gas production, fuel extraction, and broadband capacity. Progress Energy’s shares are publicly traded on the New York Stock Exchange. As illustrated in Attachment 1, Progress Energy indirectly owns a 55-percent membership interest in Progress Telecom.

Odyssey Telecorp, Inc.: Odyssey is a Delaware corporation headquartered in Palo Alto, California, and operates as a holding company for telecommunications assets and businesses. As illustrated in Attachment 1, Odyssey indirectly owns a 45-percent membership interest in Progress Telecom.

² See 47 C.F.R. § 63.03.

Progress Telecom, LLC: Progress Telecom is a Delaware limited-liability company headquartered in St. Petersburg, Florida. Progress Telecom is a regional wholesale network services company engaged in the business of providing wholesale telecommunications broadband (including DWDM, SONET, and SDH), collocation, and dark fiber services to other carriers and Internet service providers, primarily in the southeastern United States.³ Progress Telecom owns and operates a regional fiber-optic network spanning 9,000 miles, includes 29 metro networks and connectivity to international cable landings in South Florida and 31 mobile switching centers in the southeastern United States. Progress Telecom serves approximately 200 customers with a significant concentration of international- and wireless-carrier customers. Progress Telecom also offers a last-mile point-to-multipoint wireless services using unlicensed spectrum in the 900 MHz, 2.4 GHz, and 5 GHz frequency bands. Progress Telecom is a non-dominant carrier that holds authority to provide intrastate interexchange telecommunications services and competitive local exchange telecommunications services in 5 states and the District of Columbia. As described in part I.B below, Progress Telecom also owns certain assets and subsidiaries to be excluded from Level 3's purchase of Progress Telecom, including two wholly-owned subsidiaries (Progress Telecom International, LLC ("PT International") and Progress Telecom Virginia, LLC ("PT Virginia"), PT Wireless, LLC ("PT Wireless," in which Progress Telecom owns a 41-percent interest), and two Title III radio licenses, all of which will be retained by Progress Telecom's current owners.

Level 3 Communications, LLC: Level 3 is a Delaware limited-liability company headquartered in Broomfield, Colorado, and engages in the provision of domestic and international communications and information services. Level 3 is an indirect, wholly-owned

³ In Attachment 2, the parties provide a map illustrating Progress Telecom's network.

subsidiary of Level 3 Communications, Inc., a Delaware corporation headquartered in Broomfield, Colorado, and a global communications and information services company that offers a wide range of communications services over its 23,000 mile broadband fiber optic network, including Internet-protocol-based services, broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. Level 3 Communications, Inc., is a publicly traded company listed on NASDAQ (symbol: LVLT).

B. The Proposed Transaction

On January 25, 2006, Progress Energy subsidiaries, Odyssey, Odyssey subsidiaries, and Level 3 entered into a Purchase Agreement (“Agreement”) to allow Level 3 to acquire all of the membership interests in Progress Telecom currently controlled by Progress Energy and Odyssey. The Agreement excludes from purchase by Level 3 certain existing subsidiaries and assets of Progress Telecom, including (1) Progress Telecom International, LLC, which holds international Section 214 authority from the Commission, granted in File No. ITC-214-20020419-00214, to provide global facilities-based and global resale services; (2) a 41-percent interest in PT Wireless, LLC, which provides wireless tower attachment services, as well as distributed antennae systems and tower backhaul services to wireless providers; (3) PT Virginia, Progress Telecom’s Virginia subsidiary; and (4) Progress Telecom’s two Title III radio licenses, call signs WQDF545 and WQDF546. To effect the Proposed Transaction and the exclusion of certain subsidiaries and assets, the Agreement provides that the Transferors will engage in a corporate reorganization resulting in a *pro forma* transfer of control of PT International and PT Virginia to PT Holding Company LLC, a *pro forma* transfer of Progress Telecom’s interest in PT Wireless to PT Holding Company LLC, and a *pro forma* assignment of Progress Telecom’s two Title III radio licenses to PT Holding Company LLC. These *pro forma* transfers and assignments will

occur in advance of the consummation of the substantive transfer of control contemplated in the Agreement. The results of Progress Telecom's corporate reorganization are illustrated in Attachment 3.

Following the consummation of the Proposed Transaction, Progress Telecom will be a direct, wholly-owned subsidiary of Level 3, as illustrated in the diagram in Attachment 4. Level 3's acquisition of Progress Telecom will strengthen and expand Level 3's customer service offerings and networks. The acquisition also will allow Level 3 to compete more effectively in the Southeast regional market. Accordingly, approval of this transfer application will serve the public interest, convenience, and necessity.

II. INFORMATION REQUIRED BY SECTION 63.04 OF THE COMMISSION'S RULES REGARDING THE TRANSFER OF CONTROL OF PROGRESS TELECOM'S DOMESTIC COMMON-CARRIER TRANSMISSION LINES

In support of the Applicants' request for consent to transfer control of Progress Telecom's blanket domestic Section 214 authorization to Level 3, the following information is submitted pursuant to Section 63.04 of the Commission's rules:

(a)(1) The name, address, and telephone number of the Applicants are:

Transferors

PROGRESS ENERGY, INC.
410 S. Wilmington Street
Raleigh, North Carolina 27601-1748
+1 919 546 6164 tel
FRN No. 0006019780

and

ODYSSEY TELECORP, INC.
444 High Street, Suite 400
Palo Alto, California 94301
+1 650 470 7550 tel
FRN No. 0014621395

Transferee

LEVEL 3 COMMUNICATIONS, LLC
1025 Eldorado Blvd.
Broomfield, Colorado 80021
+1 720 888 2516 tel
FRN No. 0008085136

(a)(2) Progress Energy is a corporation organized under the laws of the State of North Carolina. Odyssey is a corporation organized under the laws of the State of Delaware. Progress Telecom is a limited-liability company organized under the laws of the State of Delaware. Level 3 is a limited liability company organized under the laws of the State of Delaware.

(a)(3) Correspondence concerning this application should be sent to:

Transferors

David B. Fountain
Deputy General Counsel
PROGRESS ENERGY, INC.
410 S. Wilmington Street
Raleigh, North Carolina 27601-1748
+1 919 546 6164 tel
+1 919 546 3805 fax

Richard A. Saffir
General Counsel
ODYSSEY TELECORP, INC.
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+1 650 470 7550 tel
+1 650 470 7512 fax

with a copy to:

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Melissa Conway
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Suite 500
Washington, D.C. 20036
+1 202 955 9664 tel
+1 202 955 9792 fax

*Counsel for Progress Energy, Inc., and
Odyssey Telecorp, Inc.*

Transferee

William P. Hunt III
Vice President, Public Policy
LEVEL 3 COMMUNICATIONS, LLC
1025 Eldorado Boulevard
Broomfield, Colorado 80021
+1 720 888 2516 tel
+1 720 888 5134 fax

with a copy to:

Kent D. Bressie
HARRIS, WILTSHIRE & GRANNIS LLP
1200 18th Street, N.W., Suite 1200
Washington, D.C. 20036-2560
+1 202 730 1337 tel
+1 202 730 1301 fax

Counsel for Level 3 Communications, LLC

(a)(4) Level 3 is a wholly-owned subsidiary of Level 3 Financing, Inc. (“Level 3 Financing”), a Delaware corporation engaged in the business of providing managed information technology infrastructure services across a variety of platforms. Level 3 Financing’s address is 1025 Eldorado Boulevard, Broomfield, Colorado 80021. Level 3 Financing, in turn, is a wholly-owned subsidiary of Level 3 Communications, Inc., a Delaware corporation which offers a wide range of communications services over its 23,000-mile broadband fiber optic network, including IP-based services, broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. The address of Level 3 Communications, Inc., is 1025 Eldorado Boulevard, Broomfield, Colorado 80021. Two parties hold a ten-percent-or-greater direct or indirect interest in Level 3 Communications, Inc:

- (1) Southeastern Asset Management, Inc. (“SAM”): SAM is a Tennessee corporation engaged in the business of providing investment advisory services and located at 6410 Poplar Avenue, Suite 900, Memphis, Tennessee 38119. SAM holds sole or shared voting rights for 18.83 percent of outstanding shares of Level 3 Communications, Inc., that are otherwise owned by other entities for whom SAM acts as an investment advisor. None of the other owners of outstanding shares of Level 3 Communications, Inc., whose shares are voted by SAM owns a 10-percent-or-greater direct or indirect interest in Level 3 Communications, Inc.
- (2) Leucadia National Corporation (“Leucadia”): Leucadia is a New York corporation operating as a holding company engaged in telecommunications, banking and lending, and other businesses and located at 315 Park Avenue South, New York, New York 10010. Leucadia owns 14.1 percent of the outstanding

shares of Level 3 Communications, Inc. Leucadia's shares are publicly traded on the New York Stock Exchange.

Neither of these three parties holding a ten-percent-or-greater direct or indirect interest in Level 3 Communications, Inc., holds a seat on the board of directors of Level 3 Communications, Inc.

(a)(5) By the attached certification, Level 3 certifies that no party to this application is subject to a denial of federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988, as amended.⁴

(a)(6) The Applicants set forth a complete description of the Proposed Transaction in part I.B above.

(a)(7) Progress Telecom provides domestic private line, switched voice, and other interstate services in the southeastern United States pursuant to its blanket domestic Section 214 authorization, as well as other non-common-carrier offerings. Level 3 is engaged in the provision of domestic and international communications and information services throughout the United States. To the extent Level 3 offers domestic interstate common carrier services (including private line services), it does so pursuant to its blanket domestic Section 214 authorization under Section 63.01 of the Commission's rules.

(a)(8) The request for consent to transfer control of Progress Telecom's domestic common carrier lines to Level 3 qualifies for presumptive streamlined processing under Section 63.03(b)(2)(i) of the Commission's rules because it will not create any acquisition-specific effects in any interexchange or local exchange market, as discussed further in part II below. Following consummation of the Proposed Transaction, Level 3 will continue to have a market

⁴ See 21 U.S.C. § 853(a).

share in the interstate, interexchange market of less than ten percent.⁵ Although Level 3 provides some telephone exchange services and exchange access services in the areas served by Progress Telecom, it does so only in areas that are served by a dominant local exchange carrier that is not a party to the Proposed Transaction.⁶ Neither Progress Telecom nor Level 3 is dominant with respect to any service.⁷

(a)(9) The Applicants have not filed any other applications in conjunction with the Proposed Transaction, although as noted in part I.B above, the Transferors will make the requisite notifications for the *pro forma* transfers and assignments contemplated in advance of the substantive transfer of control.

(a)(10) The Applicants request expedited consideration of this application in order to ensure a seamless transition for Progress Telecom's customers without service interruption, and to allow the parties to consummate the Proposed Transaction no later than March 2006.

(a)(11) The Applicants have not filed any waiver requests in conjunction with the Proposed Transaction.

(a)(12) The Proposed Transaction will yield affirmative public interest benefits. Grant of this application will provide Progress Telecom with access to Level 3's technical, managerial, financial, and product strengths, which will enhance the companies' ability to expand their offerings and provide more advanced telecommunications services to a broader customer base. Applicants expect the Proposed Transaction will enable Level 3 to strengthen its competitive position to the benefit of U.S. consumers.

⁵ See 47 C.F.R. § 63.03(b)(2).

⁶ See *id.*

⁷ See *id.*, § 63.03(b)(2)(i).

The Proposed Transaction will not significantly affect any participant's share of the local exchange and exchange access market segments, as there is minimal overlap between the networks of Progress Telecom and Level 3. Both Progress Telecom and Level 3 are very minor participants in local exchange and exchange access markets, where they compete with unaffiliated dominant local exchange carriers ("LECs"). Progress Telecom currently generates approximately \$70 million in annualized revenue from the sale of all services, only a subset of which constitute local exchange or exchange access services. Even if Level 3 derived all of the communications revenue (excluding interexchange revenue and reciprocal compensation revenue) reported in the 2004 10-K for Level 3 Communications, Inc., from local exchange and exchange access (when in fact, it derived only a fraction of its revenues from such services), Level 3's revenues would likely account for less than one percent of all nationwide local exchange and exchange access revenues.⁸

Similarly, the Proposed Transaction will not significantly affect any participant's share of the interstate interexchange market segment. Both Progress Telecom and Level 3 are insignificant participants in the market for interstate interexchange services. As noted above, Progress Telecom currently generates approximately \$70 million in annualized revenue from the sale of all services, only a subset of which constitute interexchange services. Level 3's toll revenues (only a portion of which are interstate interexchange revenues) in 2003 (the most recent year for which the Commission has publicly disclosed revenue data) were slightly over \$134 million.⁹ By comparison, total industry-wide toll revenues for all in 2003 exceeded \$77 billion,

⁸ See 2004 Form 10K, Item 7, of Level 3 Communications, Inc.; FCC, STATISTICS OF COMMUNICATIONS COMMON CARRIERS, at 202, Tbl. 5.20 (2003/2004 ed.) (providing 2002 data); FCC, TRENDS IN TELEPHONY SERVICE, Tbl. 8.7 (2005) (providing 2003 data). A direct year-to-year comparison is not possible, as the FCC's reports do not include 2004 data.

⁹ *Id.* Tbl. 9.1.

and total revenues for all non-LEC, non-wireless toll service providers exceeded \$56 billion.¹⁰

Thus, even assuming that all Progress Telecom and Level 3 toll revenues were interstate interexchange revenues (and they are not), the combined interexchange revenues of Progress Telecom and Level 3 would amount to no more than 2 percent of total industry-wide toll revenues, and even less than that percentage if all non-LEC, non-wireless toll services are included. Neither Progress Telecom nor Level 3 nor any affiliate of Progress Telecom or Level 3 is regulated as dominant for the provision of any service.

¹⁰ *Id.*

CONCLUSION

The Applicants respectfully request that the Commission grant this application for consent to transfer control to Level 3 of Progress Telecom's domestic common carrier transmission lines.

Respectfully submitted,

PROGRESS ENERGY, INC.

A handwritten signature in black ink, appearing to read "Peter M. Scott III", written over a horizontal line.

Peter M. Scott III
Chief Financial Officer

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+1 919 546 6111 tel

3 February 2006

ODYSSEY TELECORP, INC.

A handwritten signature in black ink, appearing to read "Sean Doherty", written over a horizontal line.

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*Counsel for Progress Energy, Inc., and
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3 February 2006

LEVEL 3 COMMUNICATIONS, LLC

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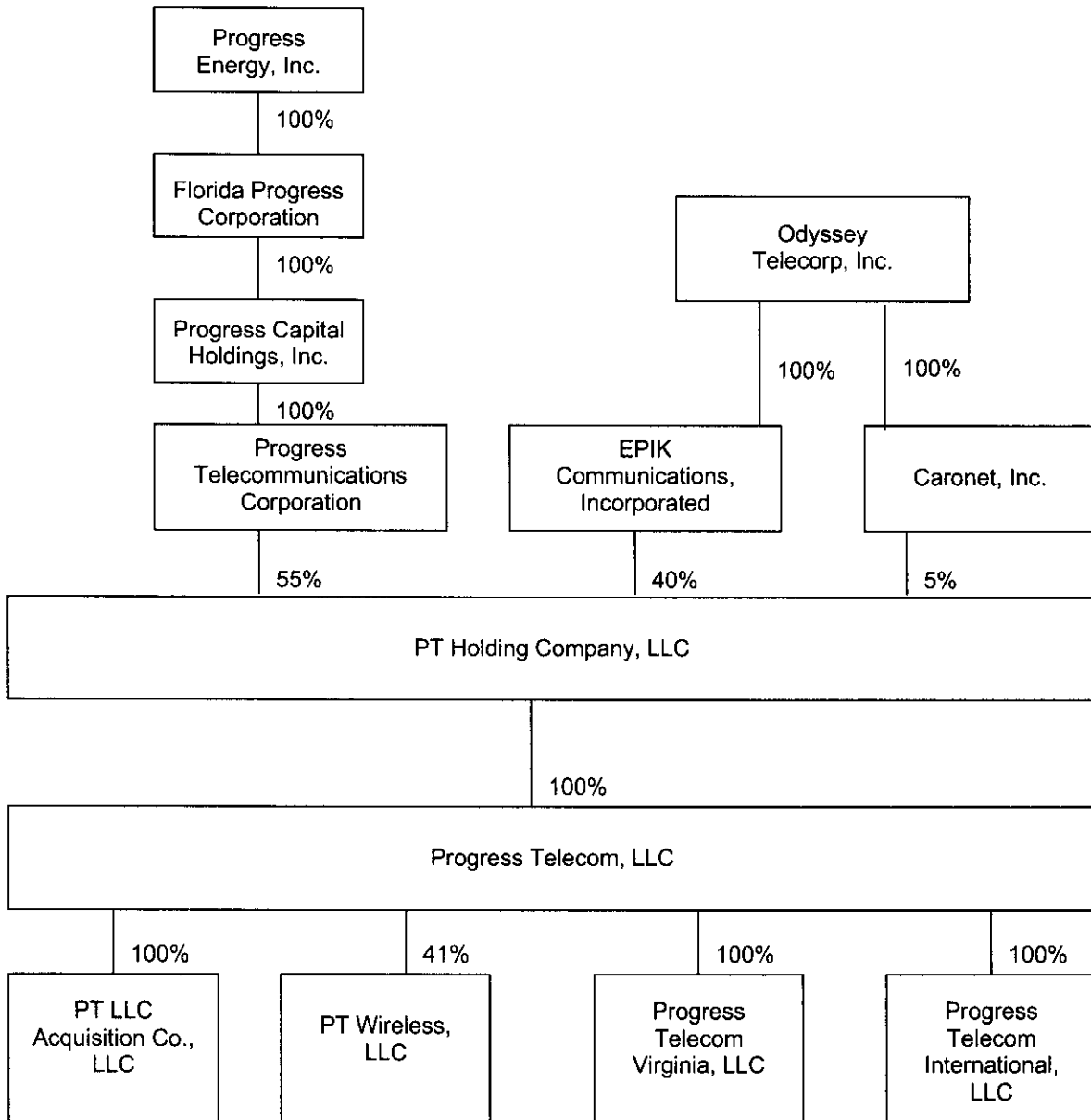
3 February 2006

LIST OF ATTACHMENTS

- 1. Existing Organizational Structure of Progress Telecom, LLC**
- 2. Map of Progress Telecom, LLC, Network**
- 3. Pre-Consummation Organizational Structure of Progress Telecom, LLC, Illustrating Corporate Reorganization to Exclude Certain Assets and Subsidiaries**
- 4. Organizational Structure of Progress Telecom, LLC, Following Consummation of Proposed Transaction**

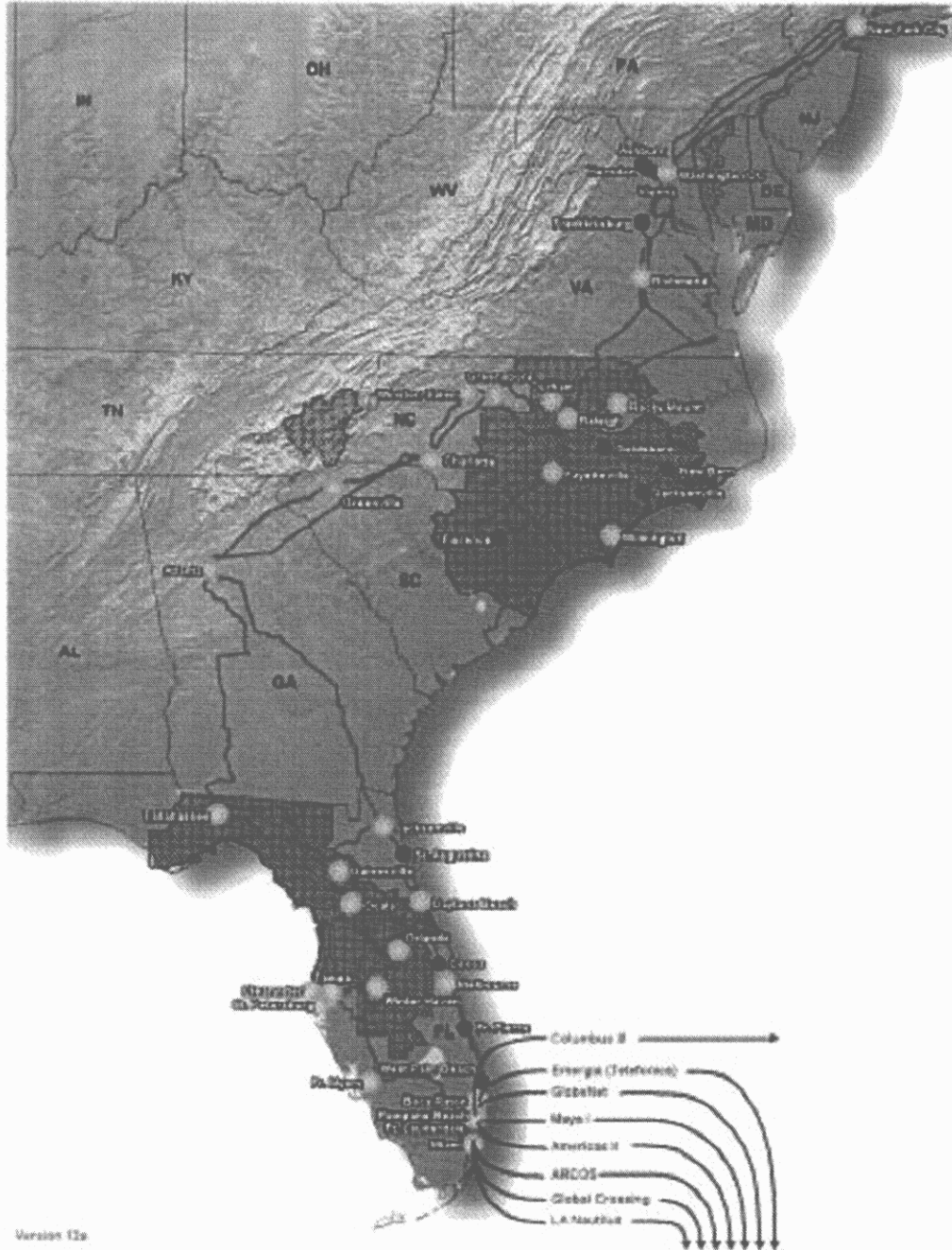
ATTACHMENT 1

EXISTING ORGANIZATIONAL STRUCTURE
OF PROGRESS TELECOM, LLC



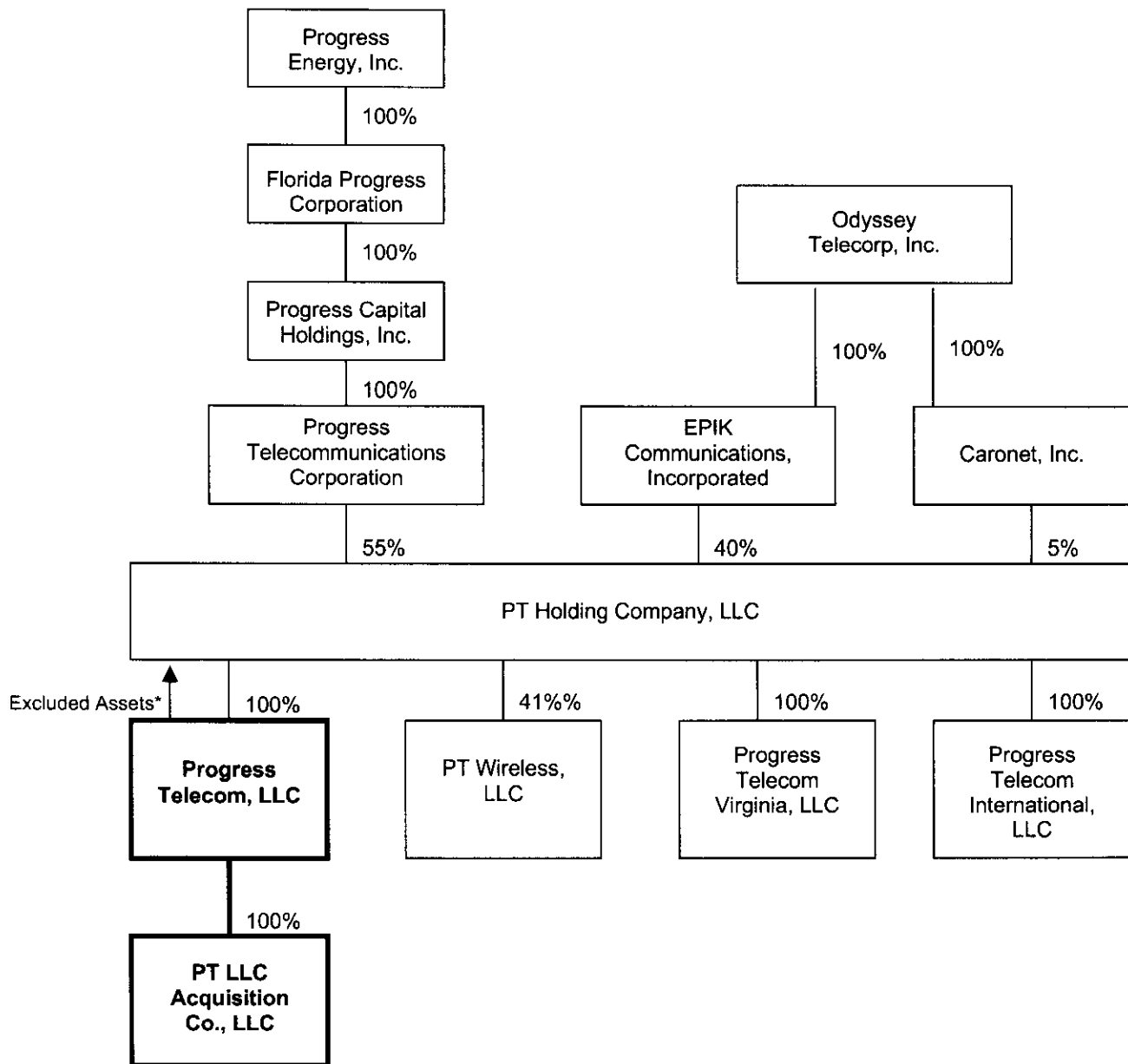
ATTACHMENT 2

MAP OF PROGRESS TELECOM, LLC, NETWORK



ATTACHMENT 3

**PRE-CONSUMMATION ORGANIZATIONAL STRUCTURE OF PROGRESS TELECOM, LLC,
ILLUSTRATING CORPORATE REORGANIZATION
TO EXCLUDE CERTAIN ASSETS AND SUBSIDIARIES**



* Excluded assets include two Title III radio licenses

ATTACHMENT 4

**ORGANIZATIONAL STRUCTURE OF PROGRESS TELECOM, LLC
FOLLOWING CONSUMMATION OF PROPOSED TRANSACTION**

